

## The Property Tax Base Sharing Act

The Property Tax Base Sharing Act is triggered if the approved plan identifies a "jurisdictional revenue disparity," such as may occur if increased costs for local government services will occur in a local government unit which does not include the mine within its taxing jurisdiction.

The Property Tax Base Sharing Act provides for a formula-based allocation of the taxable valuation of the hard-rock mineral development among affected counties, municipalities and school districts. The allocations are based on the place of residence of the hard-rock mineral development employees and their school age children.

## The Hard-Rock Mining Impact Board

The five-member Hard-Rock Mining Impact Board is appointed by the Governor in compliance with specific purposes.

Depending upon the issues before the Board, the meetings may be held in various locations throughout the State. All Board meetings are open to the public and citizen participation is encouraged. Public comment on any matter that is within the jurisdiction of the Board will be allowed at all Board meetings. The opportunity for public comment will be reflected on the meeting agenda and incorporated into the official minutes of the meeting. Board meetings are held at facilities that

are fully accessible to persons with disabilities. Any person needing reasonable accommodations should notify the Hard-Rock Board at (406) 841-2782 or TDD at (406) 841-2702 before the scheduled meeting to allow for arrangements.

If you request to be on the mailing list, an agenda will be sent to you approximately two weeks prior to the meeting of the Hard-Rock Mining Impact Board. For more information visit our web site at:

[http://comdev.mt.gov/CDD\\_HR.asp](http://comdev.mt.gov/CDD_HR.asp)  
or contact:

Hard-Rock Mining Impact Board  
Department of Commerce  
Park Avenue Building  
301 South Park Avenue  
Helena, MT 59601

### Hard Rock Mining Impact Board Members

Mary Ellen Cremer – Big Timber  
Kristen Koss – Custer  
Marianne Roose – Eureka  
Ed Tinsley – Helena  
Shain Wolstein - Butte

### Administrative Staff:

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Alternative accessible formats of this document will be provided upon request.

EXHIBIT 3  
DATE 2/4/09  
HB 194

# The Hard Rock Mining Impact Act & Property Tax Base Sharing Act



Montana Tunnels Mine near Jefferson City



Stillwater Mine near Livingston

Updated January 2009

## The Hard-Rock Mining Impact Act

### The Purpose

Working with mineral developers and affected local governments, the 1981 Montana Legislature enacted the Hard-Rock Mining Impact Act. The purpose of the Act is to ensure that local government services and facilities will be available when and where they are needed as a result of new large-scale hard rock mineral developments and that the increased costs of these services will not burden the local taxpayer. In 1983, the Legislature also addressed on-going increased costs in taxing jurisdictions that do not include the hard rock mineral development within their boundaries and the fiscal and economic impacts of major workforce reduction and mine closure.

The Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act are found in Title 90, Chapter 6, Parts 3 and 4 in the Montana Code Annotated (MCA). They are available at:  
<http://data.opi.mt.gov/bills/mca/90/6/90-6-307.htm>

### The Plan

To implement the Impact Act, the Hard-Rock Mining Impact Board has adopted administrative rules beginning with 8.104.101 in the Administrative Rules of Montana (ARM). They are available at: <http://www.mtrules.org/>

Under the Impact Act each new large-scale hard-rock mineral development in Montana is required to prepare a local government fiscal Impact Plan. In the plan the developer is to identify and commit to pay all increased capital and net operating costs to local government units that will result from the mineral development. The Impact Plan is a condition of the operating permit issued to the developer by the Montana Department of Environmental Quality.

The developer prepares the Impact Plan with the cooperation of the affected local governments. The developer then submits the proposed plan to the affected local government units and to the Hard-Rock Mining Impact Board for their formal review. Local governments review the plan for its accuracy and adequacy with respect to anticipated service and facility needs and costs. The Board reviews the plan for its compliance with the Hard-Rock Mining Impact Act and the administrative rules.

In the plan, the developer may commit to provide assistance that will prevent increased costs or may commit to pay increased costs through grants, property tax prepayments, or education impact bonds

If a local government disagrees with any portion of the plan, the governing body may file an objection with the Hard-Rock Mining Impact Board during the 90-day review period. If the objection is not resolved through negotiation between the developer and the governing body, the Board holds a public hearing on the objection and arbitrates the dispute.

The Hard-Rock Mining Impact Board must approve the Impact Plan. The developer or an affected local government unit may petition the Board to amend an approved plan under those circumstances specified by statute or as provided in the Impact Plan itself.

A new hard-rock mineral development that becomes "large-scale" after it has received its operating permit may petition the Board for a waiver from the requirements of the Act. The Board may grant a waiver or a conditional waiver or, following a public hearing, may require that an Impact Plan be prepared.

**HB 194 Testimony**

**HOUSE BILL NO. 194  
INTRODUCED BY REP. SCOTT MENDENHALL**

**House Natural Resources Committee**

**February 4, 2009**

**A BILL FOR AN ACT ENTITLED: "AN ACT STATUTORILY APPROPRIATING THE COUNTY PAYMENTS FROM THE HARD-ROCK MINING IMPACT TRUST ACCOUNT; AMENDING SECTIONS 17-7-502, 90-6-304, AND 90-6-331, MCA; AND PROVIDING AN EFFECTIVE DATE."**

**Mr. Chairman and Members of the Committee:**

For the record, my name is Dave Cole. I am the Administrator of the Department of Commerce, Community Development Division. I am here in support HB 194 and would like to thank Representative Mendenhall for sponsoring this legislation.

We understand that the Legislature traditionally opposes the use of statutory appropriations. We hope that we can provide information to demonstrate why a statutory appropriation would be a reasonable solution to an on-going problem in this case.

**BACKGROUND:**

The Hard Rock Mining Impact Board is administratively attached to the Community Development Division and our staff provides support for the board.

The five-member Montana Hard Rock Mining Impact (HRMI) Board was created by the Legislature in 1981. The Governor appoints the board members. The mission of the board and the purpose of Hard Rock Mining Impact Act (HRMI) (90-6-301, MCA) and Property Tax Base Sharing Act (PTBS) (90-1-401, MCA) are to mitigate the impacts on public services and facilities and fiscal impacts for local governments and school districts from new large-scale hard-rock mineral developments in Montana. The Board and Commerce staff also assists with the distribution of metal mines license tax distributions. (See brochure for additional information on the Board and map showing counties with hard rock mines.)

Under the Hard Rock Mining Impact Act, mine developers and the affected local governments prepare and implement impact plans intended to ensure that local government services and facilities are available when and where they are needed because of new mineral developments, without imposing additional

costs on existing local taxpayers. When necessary, the Hard Rock Mining Impact Board provides mediation services to local governments and hard rock mine developers where potentially adverse public fiscal impacts from large-scale development are identified. Mine developers pay new capital and net operating costs through prepaid property taxes with a subsequent tax credit, grants, or facility impact bonds. When necessary, the board adjudicates disputes between affected entities.)

1. Section 15-37-117, MCA, provides that 2.5 % of the total collection of metalliferous mines license taxes must be allocated to the state special revenue fund to the credit of a hard-rock mining impact trust account.
2. Section 90-6-304, MCA, provides that money is payable into the hard-rock mining impact trust account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307.
3. Within the Hard Rock Mining Trust Account, there is a reserve amount not to exceed \$100,000, which may be drawn upon in the event that the board must adjudicate a dispute between affected entities. (This occurred during a dispute between Lincoln and Sanders counties over mine taxation.)
  - (a) Money within the hard-rock mining impact trust account may be used:
    - (i) for the administrative and operating expenses of the hard rock mining impact board, as provided by 90-6-303(4);
    - (ii) to establish and maintain the \$100,000 reserve amount; and
    - (iii) for distribution to the counties of origin, as provided by 90-6-331 and section 90-6-307.
4. Section 90-6-331, MCA, provides that prior to each October 31, all money segregated by county in the hard-rock mining impact trust account following allocation to the \$100,000 hard-rock mining impact trust account established in 90-6-304(2) as of September 30 immediately preceding must be transferred to the county for which the funds have been held in deposit.

The Department of Commerce charges no administrative fee for passing these funds through from the Department of Revenue to the counties.

This provision previously had a statutory appropriation until 1999. HB 69 sponsored by Rep. Matt McCann on behalf of the Legislative Finance Committee eliminated statutory appropriations from a number of state laws, including 90-6-331. Since then, the lack of a statutory appropriation has frequently created an obstacle for fulfilling the Legislature's intent that these funds be returned to the counties where they originated.

After the elimination of the statutory appropriation for these funds, the Department budgeted for the disbursements provided for in 90-6331, MCA, (above) in House Bill 2. However, due to the volatility of precious metals prices and the resulting increases in metalliferous mines license taxes paid into the Hard Rock Mining Trust Account by mining companies, the amount of funds to be passed through to the counties has fluctuated unpredictably over several years. Revenues are highly variable because of the continually changing market prices for precious metals including copper, gold, platinum, and silver. (See graphs of changing prices for precious metals.)

As a result, it has been very difficult to accurately predict revenues and to budget for the amount of funds to be transferred from the Hard Rock Mining Trust Account to the impacted counties. (See attached chart showing Metal Mines License Tax (MMLT) spending authority and the amounts passed through each fiscal year.) For five fiscal years in a row, 2003 through 2007, the amount of metalliferous mines license taxes required to be transferred to the counties of origin exceeded the authorized spending authority provided by the Legislature.

Under the law, the funds for the previous fiscal year must be transmitted to the counties by October 1<sup>st</sup> each year. As the result of steadily rising minerals prices, the revenue estimates have consistently been lower than actual revenues received for five fiscal years in a row. In the past, we accomplished the pass through of metal mines funds by using spending authority from another Commerce program. This is done by what is called a "program transfer" which transfers budget authority from one program to another. The transfer is justified by a "Budget Change Document (BCD) which is reviewed by the OBPP and the Legislative Fiscal Division. Depending on the amount, it may also be reviewed by the Legislative Finance Committee. That is obviously not a desirable alternative since it can seriously affect critical functions in another department program.

1. To deal with this, the Department of Commerce requested an increase in spending authority of \$300,000 from the 2007 Legislature, which brought our total spending authority to \$461,861.
2. In 2007, the Department also requested a statutory appropriation through HB 110, sponsored by Representative Van Dyk, to allow the funds to be automatically passed through to the counties of origin. That bill was tabled in House Appropriations.

With rapid increases in metals prices, our financial staff was very concerned that even the \$300,000 increase might not provide sufficient spending authority to assure that we could disperse these funds to the affected counties during fiscal years 2008 and 2009.

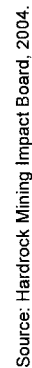
Budget Authority for FY 2008 was \$468,861; pass through payments of MMLT were \$340,595, based on calendar year 2007 tax receipts.

Budget Authority for FY 2009 was \$468,861; pass through payments of MMLT were \$402,995, based on calendar year 2008 tax receipts.)

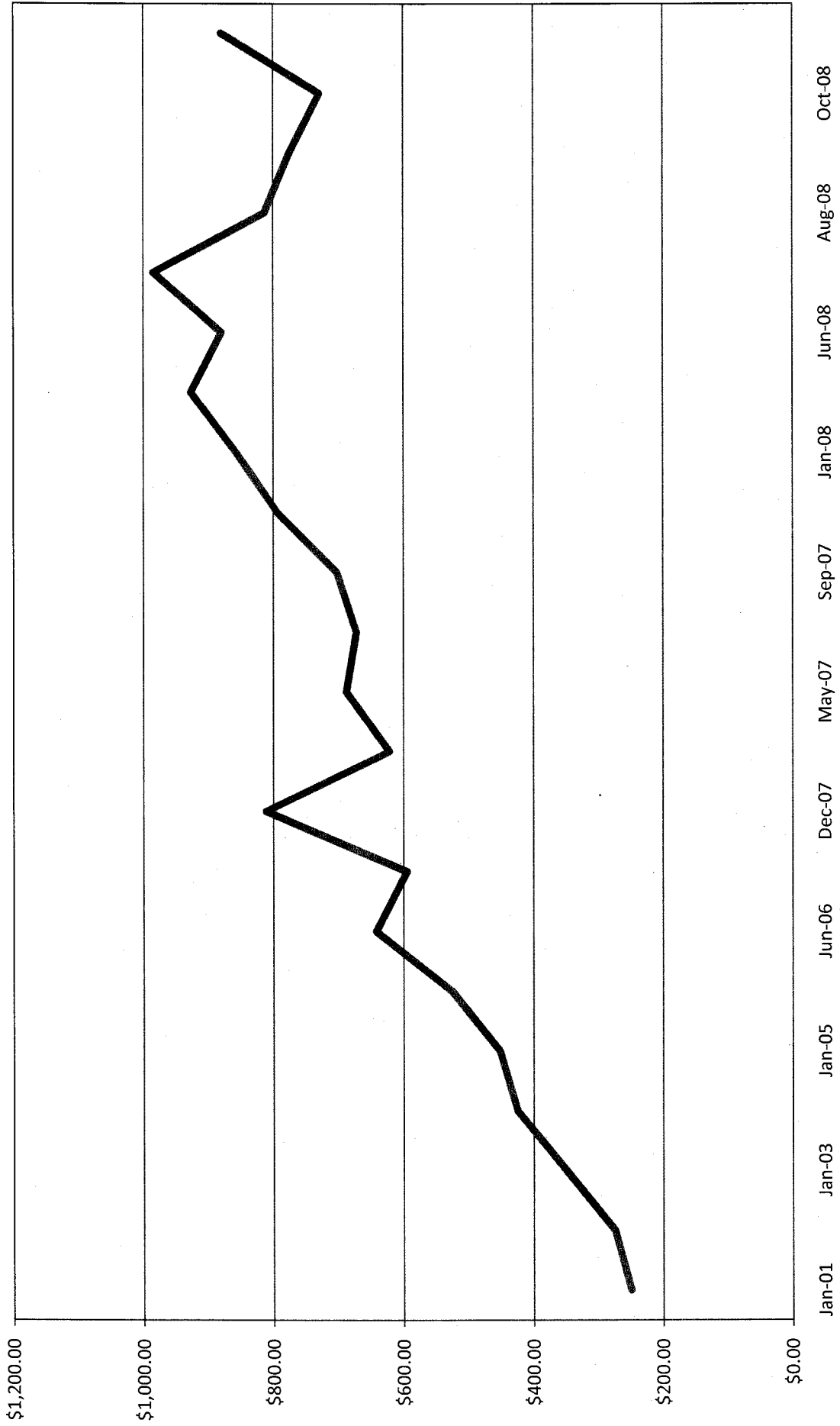
According to our department's financial manager, if it had not been for the dramatic drop in minerals prices in the last half of 2008, we would have exceeded our spending authority again this fall for the FY 2009 disbursements.

At first glance, it might appear that since metals price are down, that should take care of the problem. However, it could just be setting the stage to repeat the cycle all over again. Because metals prices were low during our base budget year, FY 2008, our authorized spending authority was established at only \$340, 595. If metals prices rise again when the economy regains strength with the Stimulus programs, as some authorities project they will, we could very likely be without adequate spending authority again to transmit the available revenues to the counties.

The removal of the statutory appropriation in 1999 has often created an obstacle for fulfilling the Legislature's intent that these funds be returned to the counties where they originated. We believe that House Bill 194 provides the best, long-term solution to this problem by restoring the statutory appropriation for the transfer of Metalliferous Mines License Tax monies to the impacted counties where the taxes originated.



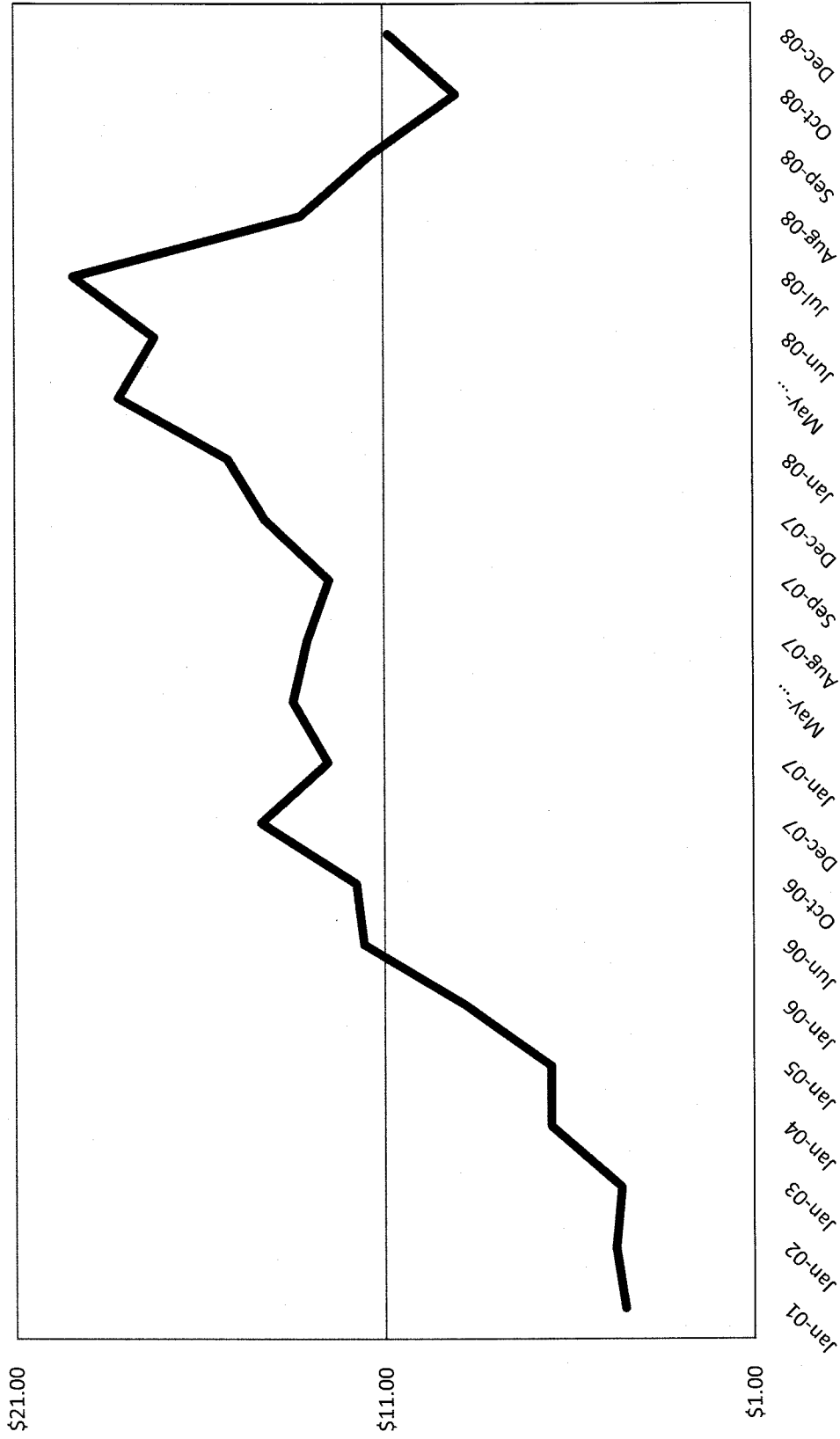
Gold price per ounce



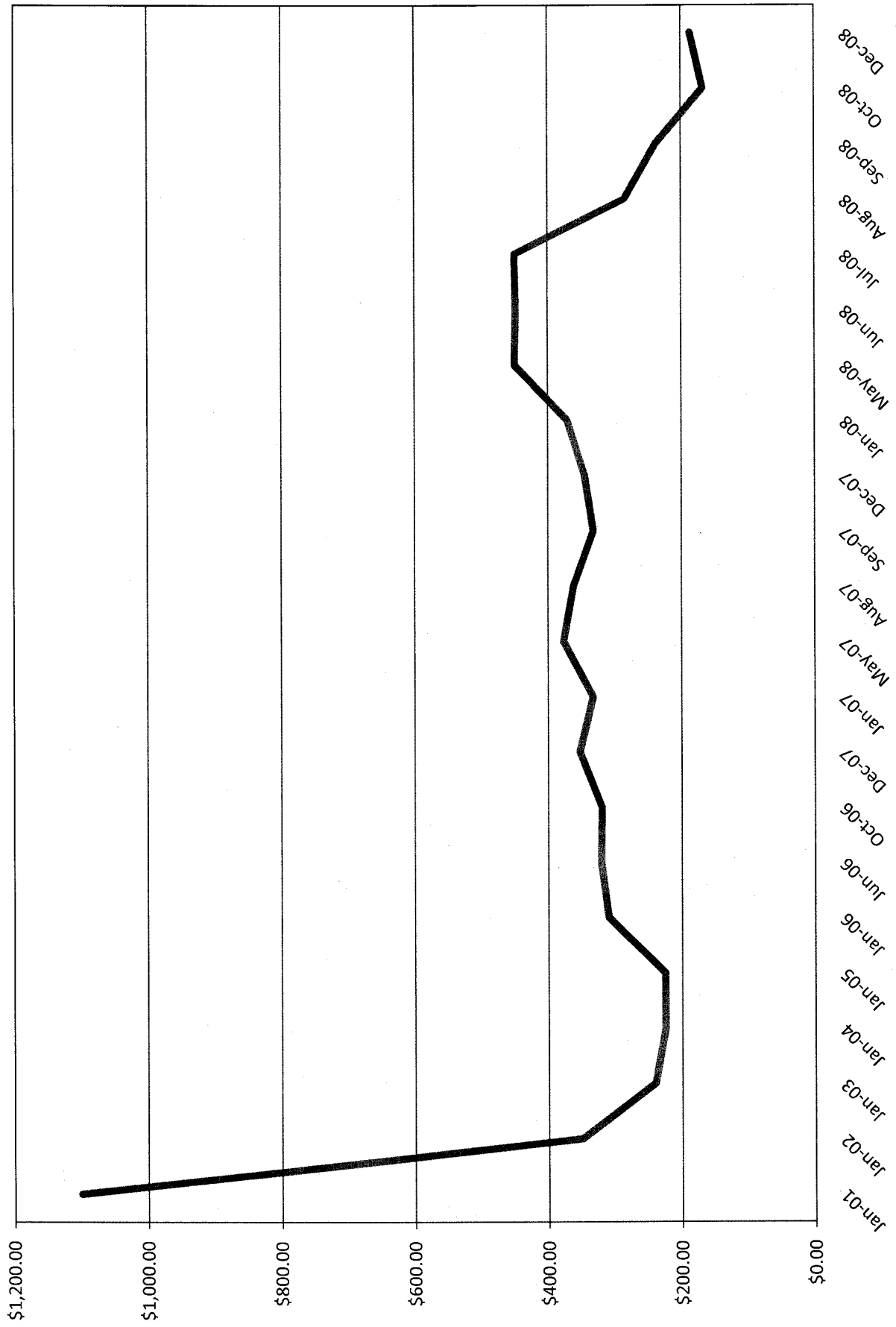


# Metal Prices 2001 - 2008

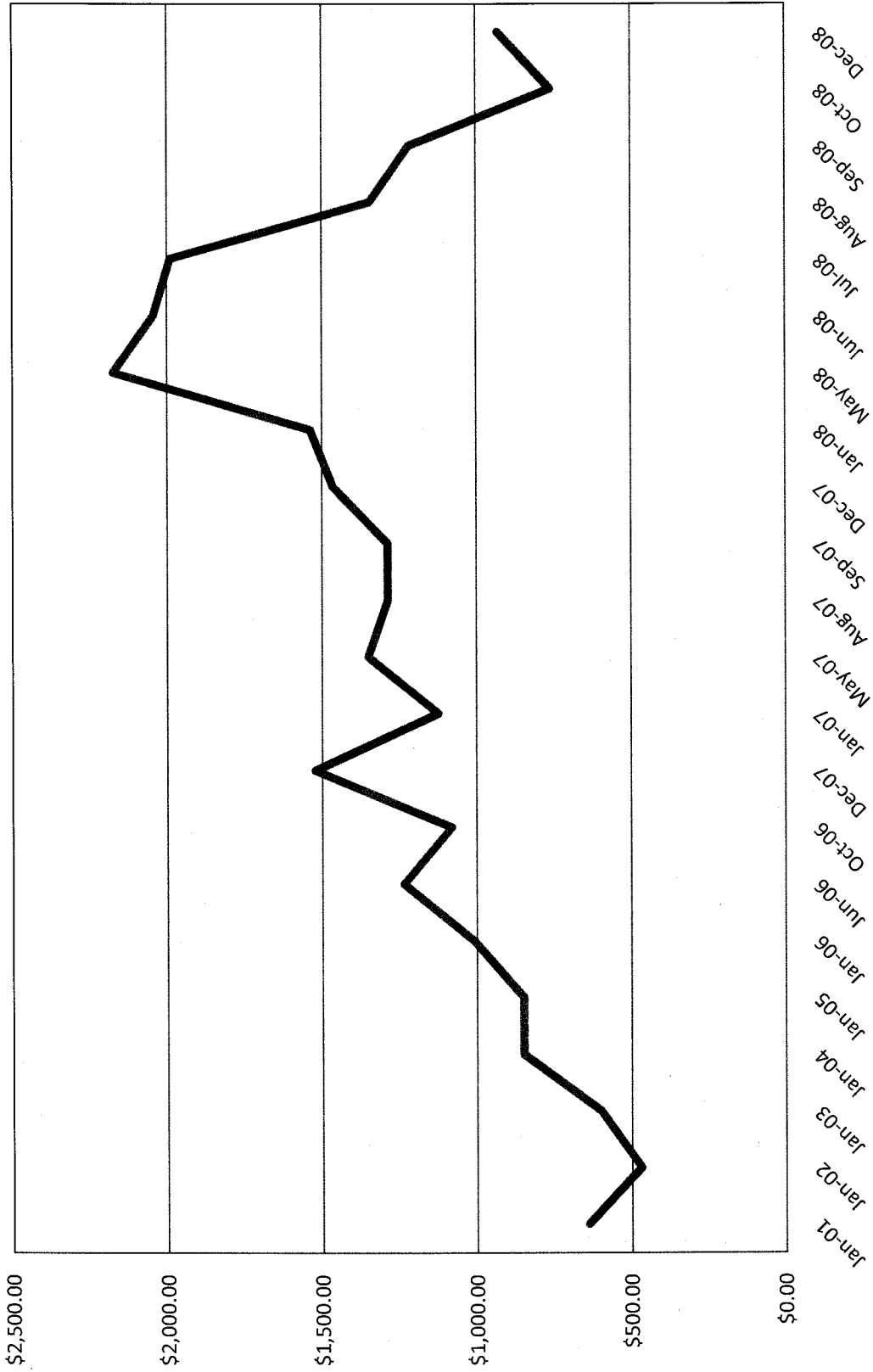
Silver per ounce



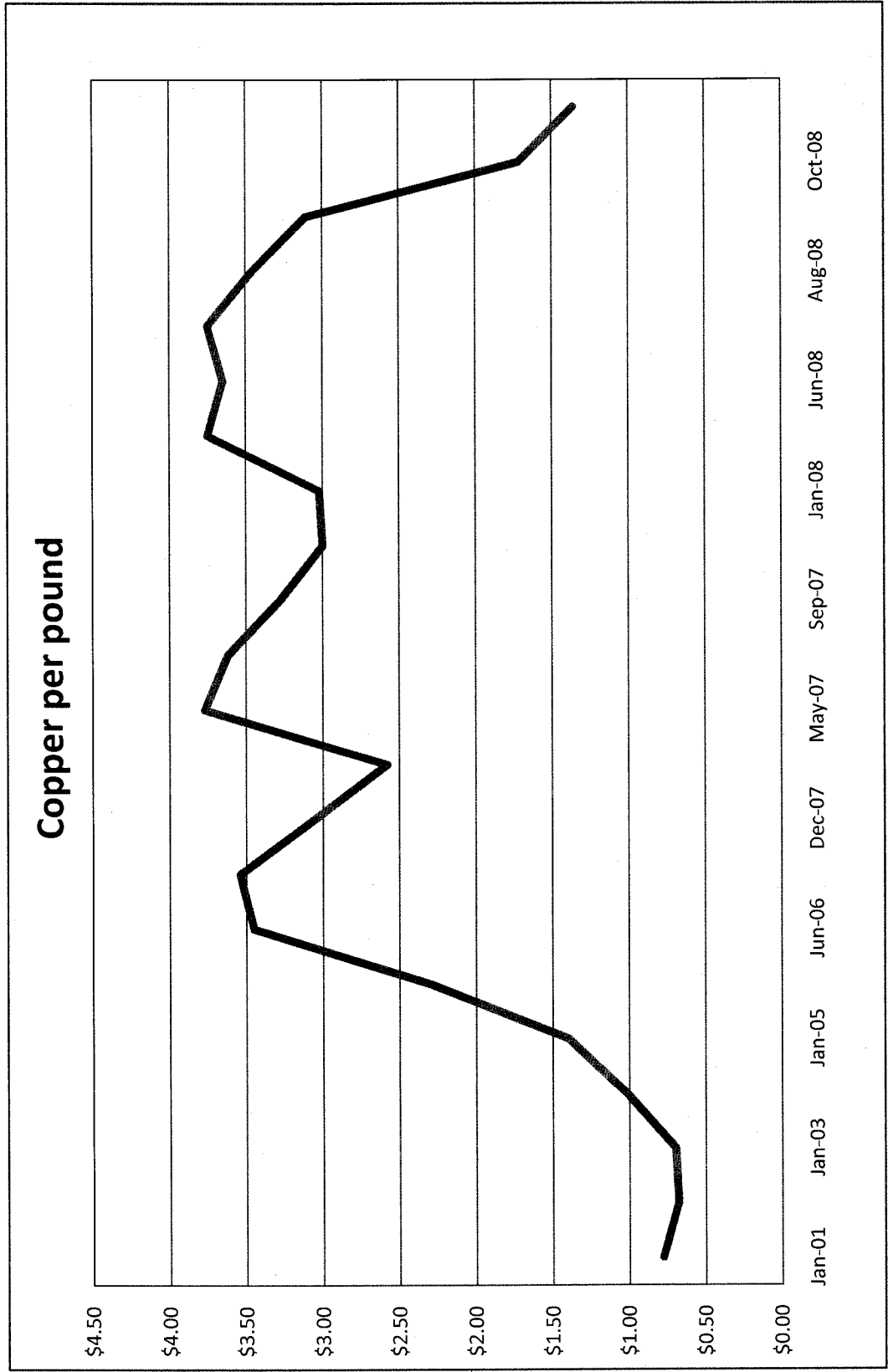
Palladium per ounce



# Platinum per ounce



# Metal Prices 2001 - 2008



# Montana Department of Commerce

## Hard Rock-Mining Impact Board

### HISTORICAL ANALYSIS OF METAL MINES LICENSE TAX (MMLT) FUNDS TO COUNTIES

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Totals	FY 2010 Budget	FY 2011 Budget
<b>MBARS Budgeted</b>	\$ -	\$ -	\$ 16,916	\$ 16,916	\$ 100,000	\$ 100,000	\$ 468,861	\$ 468,861	\$ 1,171,554	\$ 340,595	\$ 340,595
<b>SABHRS FYE Budgeted</b>	\$ -	\$ 19,000	\$ 39,416	\$ 148,175	\$ 169,000	\$ 269,190	\$ 468,861	\$ 468,861	\$ 1,582,503		
<b>MBARS/ SABHRS FYE Variance</b>	\$ -	\$ (19,000)	\$ (22,500)	\$ (131,259)	\$ (69,000)	\$ (169,190)	\$ -	\$ -	\$ (410,949)		
<b>SABHRS FYE Disbursement</b>	\$ -	\$ 18,247	\$ 39,356	\$ 148,171	\$ 168,861	\$ 269,189	\$ 340,595	\$ 402,995	\$ 1,387,415		
<b>SABHRS Budgeted/ Disbursed Variance</b>	\$ -	\$ 753	\$ 60	\$ 4	\$ 139	\$ 1	\$ 128,266	\$ 65,866	\$ 195,088		

The Budget Authority for FY 2009 was \$468,861

The Metal Mines Tax Revenue for the 1st Quarter of the Fiscal Year 2009 was \$214,633.08.

If the Revenue (metal prices determine the revenue) had continued at the 1st Quarter level the Budget Authority for FY 2009 would have been short by \$212,048.

**As of January 1, 2009 MMLT revenues were approximately \$200,000.**

## Transfers to Counties from Hard- Rock Mining Impact Trust Account

County	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	TOTALS
Jefferson	\$ 6,719.13	\$40,509.44	\$12,040.85	\$ 18,945.07	\$25,531.94	\$72,420.42	\$176,166.85
Lincoln				\$ 8,125.62	\$14,189.82	\$15,365.80	\$37,681.24
Madison			\$ 43.66				\$43.66
Meagher	\$ 13.45	\$ 20.18			\$108.86	\$89.80	\$232.29
Silver Bow		\$ 510.69	\$70,123.60	\$144,565.40	\$175,434.53	\$198,309.29	\$588,953.51
Stillwater	\$26,647.43	\$76,580.92	\$36,595.14	\$ 45,386.20	\$57,960.78	\$51,551.86	\$294,722.33
Sweet Grass	\$ 5,976.75	\$30,549.97	\$50,057.73	\$ 52,166.24	71,347.15	\$65,257.54	\$271,357.63
<b>TOTALS</b>	<b>\$39,356.76</b>	<b>\$148,171.20</b>	<b>\$168,860.98</b>	<b>\$269,188.53</b>	<b>\$344,573.08</b>	<b>\$402,994.71</b>	<b>\$625,577.47</b>

Friday, January 9, 2009

**O bama stimulus plan helps copper prices**

Story link: Obama stimulus plan helps copper prices

metalmarkets.org.UK

*by Elaine Frei*

The price of copper rose Friday on the chance that President-elect Barack Obama's plan for rescuing the US economy could help demand for industrial metals.

The plan includes infrastructure improvements that could not only create jobs that could help pull the economy out of recession, but would also require the use of industrial metals in its building projects.

Additionally, China has said that it plans to increase its strategic inventories of industrial metals such as copper.

March copper added 8 cents to \$1.56 per pound in New York, while three-month copper added \$231 to \$3,426 per tonne in London.

Precious metals prices were also up during the session as February gold added 50 cents to \$855 per troy ounce around the close of floor trade in New York, while March silver was up 22 cents to \$11.32 per troy ounce and April platinum was up \$10.90 to \$1,005.50 per troy ounce.

*Tuesday, February 3, 2009*

## **Copper, other base metals see gains**

**Story link: Copper, other base metals see gains**

metalmarkets.org.UK

*by Elaine Frei*

Copper prices were up Tuesday on new data showing home sales and manufacturing up in the United States.

The National Association of Realtors reported that pending existing home sales were up 6.3 percent in December, while the Institute for Supply Management said Monday that US manufacturers saw new orders grow in January.

March copper added 9 cents to \$1.52 per pound in New York, while three-month copper added \$200 to \$3,375 per tonne in London in late afternoon trade there.

The gains came even though copper inventories in London Metal Exchange warehouses added 4,100 tonnes during the session, overshadowing the gain of 325 tonnes recorded Monday.

Other base metals prices were also up on the session as aluminium gained \$20 to \$1,410 per tonne, zinc was up \$63.50 to \$1,177 per tonne, lead was \$65 higher to \$1,170 per tonne, nickel added \$345 to \$11,650 per tonne and tin gained \$450 to \$11,000 per tonne.



## Chinese purchases, upbeat data push US copper up

### REUTERS

Wed Feb 4, 2009 10:26am EST

NEW YORK, Feb 4 (Reuters) - U.S. copper futures rose early Wednesday, extending the previous session's near 7 percent rally, as reports of increased Chinese buying and optimistic data from China and the U.S. helped underpin the advance.

For detailed report on global copper markets, click on [MET/L]

\* Copper for March delivery HGH9 was up 3.10 cents at \$1.5530 a lb by 10:15 a.m. EST (1515 GMT) on the New York Mercantile Exchange's COMEX division.

\* Morning range from \$1.5030 to \$1.5580.

\* Benchmark March copper contract closed above its 55-day daily moving average (\$1.4668) for the first time since Jan. 26 on Tuesday. Potential double bottom forming with neckline at \$1.60. A breach of that level (on a close basis) would confirm the pattern and open the way for the target just above \$1.81 - Citigroup's CitiFX.

\* COMEX estimated volume at 7,285 lots by 9 a.m.

\* Copper boosted by reports China has started buying copper from domestic bonded warehouses and overseas markets as a move to gradually triple its state reserves to about 1 million tonnes. [nSHA29168]

\* China is the world's largest copper consumer, accounting for nearly 25 percent of global demand.

\* Improved manufacturing data from China coupled with a surge in bank lending fed additional investor optimism that the world's third largest economy may soon be on the road to recovery. [ID:nSP241879]

\* Less severe contraction in U.S. private sector jobs and in the services sector added to the red metal's positive tone.

\* The Institute for Supply Management said its non-manufacturing index came in at 42.9 in January compared with 40.1 in December. [ID:nN04508901]

\* Sentiment upbeat from data on Tuesday showing a 6.3 percent rebound in U.S. pending home sales during the month of December. [ID:nN03281919]

\* Uncertain demand outlook stemming from rising warehouse stockpiles cloud red metal's upside potential.

\* London Metal Exchange warehouse stocks added another 4,650 tonnes on Wednesday, bringing total inventory levels to 499,950 tonnes, their highest since November 2003.

\* COMEX copper stocks decreased by 350 short tons to 40,905 short tons as of Tuesday.

\* Chile's Escondida, the world's largest copper mine, said on Tuesday that 2008 copper output fell 15.43 percent due to lower ore grades and maintenance work on a grinding mill. [ID:nN03545909]

\* South Korea said it would raise its base metals reserves by 37 percent in 2009 ahead of potentially higher demand later in the year when the economy is expected to recover. [ID:nSEO201089]

\* Mexico's mining union, which has led an 18-month-long strike at one of the country's largest copper pits, said it negotiated a wage deal with Goldcorp on Tuesday. [ID:nN03321967]

\* London Metal Exchange copper for three months delivery <MCU3=LX> rose \$65 to \$3,435 a tonne.

\* Range from \$3,332 to \$3,448. (Reporting by Chris Kelly; Editing by Christian Wiessner)